

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JOHN KEPHART, an individual; THELMA LOUISE KEPHART, an individual,

Plaintiffs

V.

ROTECH HEALTHCARE, INC., a foreign corporation; VITAL CARE, INC., a foreign corporation,

Defendants

Case No.:2:15-cv-00859-JAD-NJK

Order Denying Motion to Reconsider Remand Order

[ECF 32]

10 On December 7, 2015, I found that the defendants had failed to meet their burden of
11 establishing that this court has jurisdiction over the subject matter of this case, and I remanded this
12 case back to the Eighth Judicial District Court, Clark County, Nevada.¹ Defendants now ask me to
13 reconsider that remand order, arguing that I have authority to do so under either FRCP 59(e) or
14 60(b).² Defendants are mistaken. Remand orders based on a lack of subject-matter jurisdiction are
15 not reviewable on appeal or otherwise. Defendants' motion for reconsideration is thus procedurally
16 improper and is denied.

Discussion

18 Section 1447(c) of title 28 of the United States Code contemplates remand based on a lack of
19 subject-matter jurisdiction or a defect in the removal procedure.³ When a federal court relies on a
20 ground enumerated in 28 U.S.C. § 1447(c) to remand an action back to the state court whence it was
21 removed, 28 U.S.C. § 1447(d) plainly provides that the remand order is “not reviewable on appeal or

25 | ¹ ECF 31.

26 | ² ECF 32.

²⁷ ³ See *Augon-Schulte v. Guam Election Commn.*, 469 F.3d 1236, 1240 (9th Cir. 2006).

1 otherwise.”⁴ The state court can, in fact, proceed with the case once the remand order is entered and
 2 a certified copy of that order is mailed to the state court by the clerk of this court.⁵

3 I remanded this case back to state court because I found that subject-matter jurisdiction was
 4 lacking—defendants had not met their burden to establish that the amount in controversy exceeds
 5 \$75,000.⁶ Jurisdiction over this action re vested in the state court when, on December 7, 2015, the
 6 remand order was entered on the docket in this case and the clerk of this court mailed a copy of that
 7 order to the state court. I simply do not have the authority to reconsider that remand order.⁷
 8 Defendants’ motion for reconsideration is thus procedurally defective and must be denied.

9 In remanding this case, I essentially concluded that this case was not removable at the time
 10 that defendants filed their petition for removal. When a case is not immediately removable but the
 11 defendant later receives a document that puts it on notice “that the case is one which is or has
 12 become removable,” the proper procedure is to file “a notice of removal . . . within 30 days after
 13 receipt” of the document establishing that the case is or has become removable.⁸ If defendants
 14 believe they received a document establishing that the state-court case is or has become
 15 removable, they must follow the procedure outlined in 28 U.S.C. § 1446(b)(3) and be mindful that
 16 *this case has been closed.*

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22 ⁴ *Atlantic Nat. Trust LLC v. Mt. Hawley Ins. Co.*, 621 F.3d 931, 934 (9th Cir. 2010) (quoting 28
 23 U.S.C. § 1447(d)).

24 ⁵ 28 U.S.C. § 1447(c).

25 ⁶ ECF 31 at 5–6.

26 ⁷ See 28 U.S.C. § 1447(d).

27 ⁸ See 28 U.S.C. § 1446(b)(3).

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Conclusion

2 ACCORDINGLY, IT IS HEREBY ORDERED that defendants' motion to reconsider the
3 order remanding case to state court [ECF 32] is **DENIED**.

4 DATED this 21st day of December, 2015

Jennifer A. Dorsey
United States District Judge